

acknowledges that the requirement applied equally to all employees and not just to her.

Ms. Perando also admits that there were occasions when she failed to call in as required and she does not therefore dispute the corresponding unexcused absences. She is not however specific in her testimony as to which unexcused absences, if any, remain to be challenged. She has no independent recollection of, nor adequate corroboration for, the dates on which she allegedly tried to call in but was unsuccessful and for which she now claims she was charged with unexcused absences. Under the circumstances neither the allegations nor the evidence is sufficient and her complaint in this regard must therefore be dismissed.

Ms. Perando alleges, lastly, that she was unlawfully discharged on March 27, 1985, while off work under a doctor's care. As explained at the hearings on Mettiki's Motion to Dismiss she is here claiming that she was discharged because she had a serious medical condition caused by Mettiki (industrial bronchitis) and that she could not and would not work because of the hazardous health environment presented in the laboratory where she had been transferred from her underground job. This complaint was also construed as a work refusal in the face of conditions alleged to be hazardous to her health.

As previously indicated Ms. Perando did indeed contract industrial bronchitis from her underground coal mine employment and she was thereafter transferred to the surface performing work in the Mettiki testing laboratory. She claims that the laboratory environment, even after the installation of a special ventilation hood, was such that her symptoms of industrial bronchitis returned with "a lot of pain" and "heavy pressure" on her chest accompanied by difficulty in breathing. Between January 21, 1985 and the date of her termination on March 27, 1985, she admitted being absent from 2 to 5 days a week. Shortly before her termination Ms. Perando told Personnel Manager Gearhart that she did not know when she would be able to return to work and that she was not then able to work at all. According to Gearhart she was thereafter discharged because she had not reported to work for a significant period of time.

The record shows that coal samples are tested in the Mettiki laboratory as a quality control measure. According to lab supervisor Anne Colaw the moisture, sulfur and ash content of the coal is measured in the lab and its "BTU's and volatility" are determined. According to Colaw the lab was kept clean and, when testing was performed, only about 1 gram of coal was tested at any one time and that was tested in an enclosed area separated from the area where Ms. Perando was assigned before her discharge.